



# Commonwealth of Massachusetts State Ethics Commission

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## CONFLICT OF INTEREST OPINION EC-COI-92-21

### FACTS:

You are a newly elected member of the Prudential Committee (Committee) of a Fire District (District). Your son is a full-time firefighter employed by the District. Full-time firefighters are members of a collective bargaining unit (union) and the Committee engages in collective bargaining with the union on behalf of the District. The collective bargaining agreement contains terms and conditions of employment for the firefighters, including salaries and working conditions.

### QUESTION:

Given your son's employment as a firefighter, how will G.L. c. 268A affect you as a Committee member?

### ANSWER:

As explained below, you may not participate in any matter in which your son has a financial interest.

### DISCUSSION:

The Commission has previously concluded that districts supported by public funds to provide municipal services, although not specifically identified as municipal agencies under G.L. c. 268A, §1(f), are municipal agencies for purposes of the conflict of interest law. *See EC-COI-87-2*. Therefore as a member of the District's Prudential Committee, you are a municipal employee.<sup>1/</sup> *See McMann v. State Ethics Commission*, 32 Mass. App. Ct. 421 (1992).

Section 19 prohibits a municipal employee from participating<sup>2/</sup> in a particular matter<sup>3/</sup> in which he or an immediate family member<sup>4/</sup> has a direct or reasonably foreseeable financial interest.

In your case, this section will prohibit you from taking any action as a Committee member concerning the collective bargaining agreement in question because that agreement will determine the salaries and working conditions for full-time firefighters of the District, including your son. You must, therefore, refrain from participating in any discussions or votes concerning the collective bargaining agreement, or any matter, which will affect your son's financial interest. This is so even if the matter also affects some or all other District employees as well. Other such matters might include, for example, disciplinary matters affecting your son, health benefits affecting full-time firefighters, matters affecting seniority rights which will impact upon your son, or matters involving lay-offs or retirement which affect your son. *See Commission Advisory No. 11 (Nepotism); EC-COI-90-1; In re DeOliveira*, 1989 SEC 430. You are best advised to leave the room when such matters come before the Prudential Committee, making sure that your abstention is recorded in the minutes of the meeting. *See Graham v. McGrail*, 370 Mass. 133 (1976). This section will not, however, prohibit you from acting on matters of a general nature affecting the District, if such matters do not affect your son's financial interest (such as a contract for a new fire truck or other equipment, for example).

The standards of conduct found in §23 also apply to you as a municipal employee. That section prohibits you from using your position on the Committee to obtain unwarranted benefits for yourself or others. §23(b)(2). It would, for example, prohibit you from passing on to your son or any other person confidential information concerning the Committee's negotiations with the union. §23(c). In addition, before acting on those "general" matters in which your son has no financial interest, you should make a full public disclosure concerning your son's position with the District in order to dispel any "appearance" of a conflict which might arise under §23(b)(3). You should

file your written disclosure with the District Clerk or in another appropriate public manner.

In summary, you must abstain, as a Committee member, on all matters which affect your son's financial interest, including the collective bargaining agreement in question.<sup>5/</sup>

**Date Authorized: July 14, 1992**

<sup>1/</sup>"Municipal employee," a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution. G.L. c. 268A, §1(g).

<sup>2/</sup>"Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

<sup>3/</sup>"Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

<sup>4/</sup>"Immediate family," the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, §1(e).

<sup>5/</sup>You should consider the possibility that you will have to abstain on so many matters that your service on the Committee might become impracticable. However, that determination must be made by you after considering the scope of your duties and activities as a member of the Committee.